IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.66 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Umesh D. Nagarsekar,
r/o. Chaudi, Canacona, Goa

2. Jiu Vithoba Gauncar,
r/o. Chaudi, Canacona, Goa,
expired, through L.R's.

a) Mayawati J. Gaunkar,
b) Deepak J. Gauncar
c) Vithoba J. Gauncar,
d) Shaermila J. Gauncar
all r/o. Chaudi, Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. M. Amonkar, Advocate for th respondent.

COAM : A.P. LAVANDE, J.

DATE : APRIL 15, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge Judgment and Award dated 29.1.2000, passed by the Additional District Judge III (South) Margao in Land Acquisition Case No.97/95.

2. By Notification dated 12.8.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired large chunks of lands, situated at Chaudi Canacona. Land belonging to the respondents bearing Survey Nos. 153/1 (part), which was a paddy field, admeasuring 2150 sq. metres, was part of the acquired land. The Special Land Acquisition Officer, by his Award, awarded Rs.9/- per sq. metre for the said land.

3. Being dissatisfied, the respondents sought reference under Section 18 of the Act. The reference Court enhanced the compensation from Rs.9/- to Rs. 24/- per sq. metres, relying upon the Award dated 15th March, 1989 passed by this Court.

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the acquired land at the rate of Rs.24/- per sq. metre is legal and justified and, if not, what is the compensation payable in respect of

the acquired land ?

5. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have awarded Rs.24/- per sq. metre in respect of the acquired land being paddy field inasmuch as the said land had no building potential. The learned Counsel submitted that in any event, the reference Court ought not to have granted increase of 10 % every year based on the Award dated 15th March, 1989. The learned Counsel further submitted that in connected appeals arising out of the same notification, this Court has granted Rs.19/- per sq. metre for the paddy fields and, therefore, in any event, the compensation cannot exceed Rs.19/- per sq. metre.

6. Per contra, Mr. Amonkar, learned Counsel appearing for the respondents submitted that the reference Court was absolutely justified in relying upon the Award dated 15th March, 1989 and granting 10 % increase every year in respect of the acquired land. According to the learned Counsel, the acquired land had good potential and, therefore, no interference is called for by this Court against the impugned Judgment and Award.

7. I have considered the submissions made by the learned Counsel appearing for the parties. In so far as increase of 10 % per year

granted by the reference Court, I have already held in number of connected appeals that having regard to the fact that the acquired land is a paddy field and situated at Chaudi Canacona and also having regard to the fact that there is absolutely no evidence led about any development around the acquired lands in the preceding years of acquisition, increase of 5 % and not 10 % per year would be justified. In other connected appeals, under the same notification dated 4.7.1991, I have awarded Rs.19/- per sq. metre in respect of the paddy fields by granting increase of 5 % every year from 30.4.1986. In the present case also, I hold that the respondents should be given the same benefit and accordingly, the compensation payable in respect of the acquired land is fixed at Rs.19/- per sq. metre.

8. The reference Court has awarded 50 % of the enhanced compensation in favour of respondent No.1 and 50 % in favour of the legal representatives of respondent No.2. The evidence on record clearly suggests that an area of 1075 sq. metres was in possession of respondent No.1 and respondent no.2 had no claim whatsoever in respect of the said land. The original respondent No.2 was in possession of remaining 1075 sq. metres of land as tenant and, therefore, he claimed enhanced compensation in respect of the said area. The reference Court was, therefore, justified in awarding the enhanced compensation in equal shares to respondent No.1 and the legal

representatives of respondent No.2.

9. In view of the above discussion, the appeal is partly allowed. The compensation payable in respect of the acquired land is fixed at Rs.19/- per sq. metre.

Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.